U.S. Department of Justice

Immigration and Naturalization Service

D5

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted] Public Copy

File: WAC 99 247 51326 Office: California Service Center Date: AUG 31 2000

IN RE: Petitioner: [redacted]
Beneficiary

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(iii)

IN BEHALF OF PETITIONER: [redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner engages in the operation of a full service hair salon. It seeks classification of the beneficiary as a trainee for a period of 24 months. The director determined that the petitioner's training program deals in generalities with no fixed schedule, objectives or means of evaluation. The director also determined that the petitioner does not have the physical premises and enough sufficiently trained manpower to provide the training specified. The director decided that the petitioner has not demonstrated the proposed training is not available in the beneficiary's own country. The director also decided that the petitioner had not demonstrated that the beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed. Further, the director determined that the beneficiary already possessed substantial training and expertise in the proposed field of training. Finally, the director decided that the petitioner did not establish that the beneficiary will not engage in productive employment.

On appeal, counsel submitted additional evidence for consideration.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(iii), provides classification to an alien having a residence in a foreign country which he or she has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. 214.2(h)(7) states, in pertinent part:

> (ii) *Evidence required for petition involving alien trainee*--(A) *Conditions.* The petitioner is required to demonstrate that:
>
> (1) The proposed training is not available in the alien's own country;
>
> (2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;
>
> (3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

(iii) *Restrictions on training program for alien trainee.* A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The petitioner's training program requires 24 months for completion. The training program will provide specialized professional training in makeup and hair coloring technology. The goal is to equip the trainee with the professional expertise necessary for employment in Japan as a makeup and hair color consultant.

The beneficiary will receive her instruction at the petitioner's salon and training center in San Francisco, California. The record contains the petitioner's lease and photographs of its facility. The petitioner has established that the physical premises are suitable for such training.

Further, the program consists of 50% direct instruction and 50% practical training. The petitioner has shown that the beneficiary will not be engaged in productive employment beyond that necessary and incidental to the training in makeup and hair color. Further, the petitioner demonstrated that the beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed.

The record indicates that the beneficiary has been employed by [redacted] since 1992. In her current and previous positions, the trainee performed basic and routine hair cutting, styling and permanent wave tasks. The petitioner states that the beneficiary's experience and credentials are appropriate for participation in its makeup and hair color consultant training program. Absent a detailed description of the beneficiary's employment history, the beneficiary may already have substantial training and expertise in the proposed field of training.

The beneficiary's present employer states that the beneficiary has no experience in hair coloring or makeup and that training in American-style makeup, hair care and personal beauty services are not available in Japan. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, the beneficiary may not be classified as a nonimmigrant trainee, in the absence of a showing that the training is not available in her own country and that the purported training is not essentially experience in repetition, review, and practical application of skills. See Matter of Frigon, 18 I&N Dec. 164 (Comm. 1981). No

evidence has been presented that such training does not exist in the beneficiary's home country.

The petitioner's training program deals in generalities with no fixed schedule, objectives, or means of evaluation. The training program does not include the number of hours that will be spent in each course, who will be providing the training and the means by which the instructor(s) will be evaluating the trainee.

The progress of the beneficiary will be evaluated by the petitioner and his subordinates. The petitioner states that he will oversee, supervise and evaluate both the academic instruction and the period of supervised application during all phases of academic instruction and practical training. The petitioner has not explained how he will be responsible for the beneficiary's overall supervision in a program consisting of four hours of direct instruction, two hours of supervised practical training and two hours of direct instruction or occasional periodic practical training and still be able to perform his duties as general manager. Moreover, the petitioner has not established that it has enough sufficiently trained manpower to provide the training specified.

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.